

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**NITRO ELECTRIC COMPANY, INC.,**

**Plaintiff,**

**v.**

**ALTIVIA PETROCHEMICALS, LLC**

**Defendant.**

**Civil Action No. 3:17-cv-02412**

**PLAINTIFF NITRO ELECTRIC COMPANY, INC.'S MOTION FOR COSTS  
ASSOCIATED WITH SERVICE AND ATTORNEYS' FEES**

Plaintiff Nitro Electric Company, Inc., by its undersigned attorneys, respectfully submits this Motion for Costs Associated with Service and Attorneys' Fees.

**Background**

On April 20, 2017, Plaintiff Nitro Electric Company, Inc. ("Nitro") filed a Complaint against Defendant ALTIVIA Petrochemicals, LLC ("ALTIVIA"). (Doc. #1). One day later, on April 21, 2017, Nitro sent ALTIVIA a Notice of Lawsuit and Request for Waiver of Service of Summons ("Notice and Waiver"), requesting that ALTIVIA waive service and avoid the costs associated with service, by certified mail, return receipt requested. (Doc. #6). The United States Postal Service return receipt shows that ALTIVIA, through its agent, received the Notice and Waiver on April 25, 2017. (A true and correct copy of the United States Postal Service Receipt is attached hereto as Exhibit A.)

### **Discussion**

Pursuant to Fed. R. Civ. P. 4(d)(1), parties have a duty to avoid unnecessary expenses associated with serving a summons. Therefore, before serving the summons, the plaintiff can request that the defendant agree to waive service, and therefore allow the defendant additional time to answer or otherwise respond to the complaint. Fed. R. Civ. P. 4(d)(1). If, however, the defendant fails, without good cause, to sign and return the waiver requested by the plaintiff, then the Court must impose on the defendant: (1) the expenses later incurred in making service; and (2) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses. Fed. R. Civ. P. 4(d)(2).

In an effort to avoid the unnecessary expenses associated with serving a summons, Nitro sent to ALTIVIA the Notice and Waiver on April 21, 2017, which ALTIVIA received through its agent on April 25, 2017. In the Notice and Waiver, Nitro requested that ALTIVIA return the Waiver within forty-five (45) days from receipt, as required by L.R. Civ. P. 4.1. ALTIVIA acknowledged receipt of the Notice and Waiver by its agent signing for the certified mailing, but ALTIVIA failed to meet the return deadline. ALTIVIA has not, and cannot, provide any good cause as to why it failed to meet this deadline. Due to ALTIVIA's failure, Nitro was forced to serve ALTIVIA with the summons and incur expenses in the amount of \$58.05 in doing so. (A true and correct copy of the Judicial Attorney Services, Inc. Invoice is attached hereto as Exhibit B.) Nitro also incurred reasonable expenses in the amount of \$500.50 in drafting and filing this Motion to collect these service expenses. Accordingly, pursuant to Fed. R. Civ. P. 4(d)(2), Nitro respectfully requests that the Court award it the expenses and attorneys' fees that it incurred in effecting service and drafting and filing this Motion.

Respectfully submitted this 14th day of June, 2017.

/s/ Daniel J. Cohn

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ATTORNEYS FOR NITRO ELECTRIC COMPANY, INC.

# EXHIBIT A

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> <i>Shirley Wilkes</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:            Altivia Petrochemicals, LLC            c/o Corporation Service            Company, its Registered Agent            2711 Centerville Rd., Ste 400            Wilmington, DE 19808</p>		<p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>	
<p>2. Article Number (Transfer from service label)            7013 0600 0000 5071 4374</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input checked="" type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	



9590 9402 1592 5362 3902 34

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

# **Exhibit B**

**Knott, Ethan**

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**Subject:**

Your Judicial Attorney Services, Inc. receipt [#1516-7903]



**\$58.05 at Judicial Attorney Services, Inc.**

**VISA** 7405

June 13, 2017

#1516-7903

Description	Amount
Invoice 226211	\$58.05
<b>Total</b>	<b>\$58.05</b>

Have a question or need help? [Send us an email](#) or [give us a call at \(630\) 221-9007](#).

Something wrong with the email? [View it in your browser](#).  
You are receiving this email because you made a purchase at  
[Judicial Attorney Services, Inc.](#)

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**CERTIFICATE OF SERVICE**

I certify that I have this day served the Defendant in this action with the foregoing Plaintiff Nitro Electric Company, Inc.'s Motion for Costs Associated with Service and Attorneys' Fees by regular U.S. Mail addressed to the following:

Corporation Service Company  
Registered Agent for Altivia Petrochemicals, LLC  
2711 Centerville Rd.  
Suite 400  
Wilmington, Delaware 19808

This 14th day of June, 2017.

/s/ Daniel J. Cohn  
Daniel J. Cohn